



March 27, 2009

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## ENGROSSED HOUSE BILL No. 1175

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DIGEST OF HB 1175 (Updated March 25, 2009 1:20 pm - DI 106)

**Citations Affected:** IC 35-36; IC 35-40.

**Synopsis:** Victims' rights. Provides that if a motion is made to postpone a trial or other court proceeding involving certain offenses, the court shall consider whether a postponement will have an adverse impact on certain victims. Provides that a victim has the right to be free from intimidation, harassment, and abuse throughout the criminal justice process. Specifies that "defense counsel" includes an agent for defense counsel or for a defendant. Provides that, if defense counsel would like to interview a child less than 16 years of age who is a victim or alleged victim of a sex offense, defense counsel must contact the prosecuting attorney. Specifies that the prosecuting attorney may not instruct the child not to speak with defense counsel. Authorizes a court to impose reasonable conditions on an interview if the parties are unable to reach an agreement on the conditions of the interview without the intervention of the court.

**Effective:** July 1, 2009.

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(SENATE SPONSORS — BECKER, SIPES, DEIG, HEAD)

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January 12, 2009, read first time and referred to Committee on Judiciary.  
February 17, 2009, amended, reported — Do Pass.  
February 23, 2009, read second time, amended, ordered engrossed.  
February 24, 2009, engrossed.  
February 25, 2009, read third time, passed. Yeas 94, nays 4.

SENATE ACTION

March 3, 2009, read first time and referred to Committee on Judiciary.  
March 26, 2009, amended, reported favorably — Do Pass.

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EH 1175—LS 6719/DI 106+



March 27, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1175

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 35-36-7-3 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) This section  
3       applies to criminal actions ~~for felonies under IC 35-42~~; for:

- 4               (1) **an offense listed in IC 11-8-8-4.5(a);**  
5               (2) neglect of a dependent (IC 35-46-1-4);  
6               (3) **battery (IC 35-42-2-1) if the victim is:**  
7                     (A) **less than eighteen (18) years of age; or**  
8                     (B) **an endangered adult (as defined in IC 12-10-3-2); and**  
9               for  
10              (4) **attempts of those felonies (IC 35-41-5-1); the crimes listed in**  
11              **subdivisions (1) through (3).**

12       (b) If a motion is made to postpone a trial or other court proceeding  
13       that involves an offense listed in subsection (a), the court shall consider  
14       whether a postponement will have an adverse impact upon **an**  
15       **endangered adult (as defined in IC 12-10-3-2) or** a child who is less  
16       than ~~ten (10)~~ **sixteen (16)** years of age and who:

- 17               (1) is the alleged victim of an offense listed in subsection (a); or  
18               (2) will be a witness in the trial.

EH 1175—LS 6719/DI 106+



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SECTION 2. IC 35-40-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. A victim has the right to be:

(1) treated with fairness, dignity, and respect; **and**

(2) **free from intimidation, harassment, and abuse;**  
throughout the criminal justice process.

SECTION 3. IC 35-40-5-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) **This section applies only to a child less than sixteen (16) years of age who is the victim or alleged victim of a sex offense (as defined in IC 11-8-8-5.2).**

(b) As used in this section, "defense counsel" includes an agent of:

(1) the defense counsel; or

(2) the defendant.

(c) After charges are filed against a defendant, if defense counsel would like to interview a child described in subsection (a), the defendant or defense counsel must contact the prosecuting attorney. The child has the right under section 3 of this chapter to confer with the prosecuting attorney before the interview occurs. The prosecuting attorney may not instruct the child not to speak with defense counsel.

(d) If the parties are unable to agree to the terms of the interview, the parties may petition the court for a hearing on the terms of the interview prior to the interview taking place. The court shall review the terms suggested by the parties and consider the age of the child, any special considerations, and the rights of victims provided by IC 35-40-5-1 in setting reasonable terms for the interview.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1175, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 35-36-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) This section applies to criminal actions ~~for felonies under IC 35-42~~, for:

- (1) **an offense listed in IC 11-8-8-4.5(a);**
- (2) neglect of a dependent (IC 35-46-1-4);
- (3) **battery (IC 35-42-2-1) if the victim is:**
  - (A) **less than eighteen (18) years of age; or**
  - (B) **an endangered adult (as defined in IC 12-10-3-2); and**
- ~~for~~
- (4) **attempts of those felonies ~~(IC 35-41-5-1)~~; the crimes listed in subdivisions (1) through (3).**

(b) If a motion is made to postpone a trial or other court proceeding that involves an offense listed in subsection (a), the court shall consider whether a postponement will have an adverse impact upon **an endangered adult (as defined in IC 12-10-3-2) or** a child who is less than ~~ten (10)~~ **sixteen (16)** years of age and who:

- (1) is the alleged victim of an offense listed in subsection (a); or
- (2) will be a witness in the trial."

Page 1, delete lines 7 through 12.

Page 1, line 16, after "victim" insert "**or alleged victim**".

Page 2, delete lines 1 through 9, begin a new paragraph and insert:

**"(b) After charges are filed against a defendant, if counsel for a defendant would like to depose or interview a child described in subsection (a), the defendant or counsel for the defendant must arrange the deposition or interview through the prosecuting attorney's office.**

(c) **The response to a request for deposition or interview of a child described in subsection (a) shall be communicated to the defense attorney by the prosecutor or deputy prosecutor.**

(d) **Before any deposition or interview of a child described in subsection (a) by counsel for the defendant, the child through the prosecuting attorney or a deputy prosecuting attorney may request conditions for the deposition or interview regarding:**

- (1) **The specification of a reasonable date, time, duration, and location of an interview or deposition, including requirements**

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that the interview or deposition take place at the prosecutor's office or a location in the courthouse.

(2) Whether the defendant is permitted to be present at the interview or deposition.

(3) The right of the child, the child's attorney, the prosecuting attorney, or a deputy prosecuting attorney to terminate the interview or deposition if the interview or deposition is not conducted in a professional and dignified manner or is conducted in violation of the court's conditions.

(e) If the parties are unable to agree to the terms of the deposition or interview, the parties may petition the court for a hearing on the terms of the deposition or interview prior to the deposition or interview taking place. The court shall review the terms suggested by the parties and consider the age of the child, any special considerations, and the rights of victims provided by IC 35-40-5-1 in setting reasonable terms for the deposition or interview."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1175 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 6, nays 4.

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#### HOUSE MOTION

Mr. Speaker: I move that House Bill 1175 be amended to read as follows:

Page 2, delete line 15 and insert "**contact the prosecuting attorney. The child has the right under section 3 of this chapter to confer with the prosecuting attorney before the interview or deposition occurs. The prosecuting attorney may not instruct the child not to speak with defense counsel.**".

Page 2, delete lines 16 through 19, begin a new paragraph, and insert:

**"(c) If defense counsel would like to depose a child, defense counsel must notify the prosecuting attorney. Upon receiving notification from defense counsel, the prosecuting attorney shall contact the child to determine a reasonable date and time for the deposition and shall communicate this information to defense**

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**counsel within a reasonable amount of time."**

Page 2, line 20, delete "or interview".

Page 2, line 23, delete "or interview".

Page 2, line 23, delete "regarding:" and insert **"in accordance with the conditions described in Trial Rule 26. The parties shall make every effort to establish conditions agreeable to each side."**

Page 2, delete lines 24 through 34.

Page 2, line 36, delete "or interview".

Page 2, line 37, delete "or interview" and insert **"under Trial Rule 26"**.

Page 2, line 38, delete "or interview".

Page 2, line 41, delete "or" and insert ".".

Page 2, delete line 42.

(Reference is to HB 1175 as printed February 18, 2009.)

RIECKEN

# COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1175, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, between lines 11 and 12, begin a new paragraph and insert:

**"(b) As used in this section, "defense counsel" includes an agent of:**

**(1) the defense counsel; or**

**(2) the defendant."**

Page 2, line 12, delete "(b)" and insert **"(c)"**.

Page 2, line 12, after "if" insert **"defense"**.

Page 2, line 12, delete "for a".

Page 2, line 13, delete "defendant".

Page 2, line 13, delete "depose or".

Page 2, line 14, after "or" insert **"defense"**.

Page 2, line 14, delete "for the defendant".

Page 2, line 17, delete "or deposition".

Page 2, delete lines 19 through 30.

Page 2, line 31, delete "(e)" and insert **"(d)"**.

Page 2, line 32, delete "deposition," and insert **"interview,"**.

Page 2, line 33, delete "deposition under Trial Rule 26" and insert

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**"interview".**

Page 2, line 33, after "to the" delete "deposition" and insert **"interview".**

Page 2, line 37, delete "deposition." and insert **"interview.".**

and when so amended that said bill do pass.

(Reference is to HB 1175 as reprinted February 24, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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